IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 994 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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VASANTLAL NAGJIBHAI PATEL & 2 - Appellant(s)
Versus
PRAVINBHAI BABALDAS MODI & 1 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1 - 3.
MR RN SHAH for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 21/07/2006

ORAL JUDGMENT

1. This appeal directed against the judgement and order dated 24.02.1984 passed by the Chamber Judge, City Civil Court, Ahmedabad below application Exh. 7 in Civil Suit No. 1736 of 1983 whereby the application was allowed and the suit was stayed under Section 34 of the Arbitration Act.

2. The short facts of the case are that original plaintiff and defendant No. 2 were partners of the firm namely Shyam Krushna Corporation. The partnership deed was executed on 15th of December 1978 and there is an

arbitration clause and according to that when there is any dispute between the partners, it has to be settled through arbitration. The original defendant no. 2 has retired from the partnership from 31.05.1980 by a deed dated 18.07.1980 and therefore the original plaintiff has filed this application.

2.1 Learned Advocate for the appellants has submitted that Trial Court has failed to appreciate that this was a suit against one of the partners who has already retired and looking to the allegation made in the plaint that after the retirement when the accounts were scrutinised by the remaining partners it was found that the defendant No. 2 has wrongly credited the amounts in the account of defendant No. 1 and thereafter he has withdrawn the same. Hence this allegation of collusion between the two partners who are full brothers.

2.2 He further submitted that Trial Court has failed to appreciate that there is nothing on the record to show or suggest that the defendants were ready and willing at the time when the dispute arose and thereafter till the suit was filed and thereafter to refer the dispute to the Arbitration.

3 As a result of hearing and perusal of the record it is found that original defendant No. 1 was not a partner and all the partners were also not the partners of the old firm and so the cause of action cannot be split and some part cannot be referred to arbitration. The trial court observed that it is advisable that that the suit against all the original defendants be stayed as the suit cannot be stayed only against the original defendant No. 2 and not against the original defendant No. 1, otherwise also, the suit is based upon the allegation that the original defendant No. 1 has obtained several amounts by the original defendant No. 2, keeping other partners in dark. Therefore, the question as to what are the accounts and how they have been written and what are the liabilities of the partners in the light of the findings regarding those account has to be properly decided and then only the question of deciding the liability of the original defendant No. 1 to return the above amount could arise.

I am of the view that the Tribunal has correctly appreciated the facts and law and arrived at just and proper decision. Learned Counsel for the appellant is not able to point out anything contrary to take a different view of the matter.

4. In view of the above finding I am of the view that the Trial Court has not committed any error in passing the impugned order. I am in complete agreement with the reasoning adopted and the findings arrived at by the Trial Court. No case is made out to cause interference. Hence the appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*